

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

OHIO VALLEY ENVIRONMENTAL
COALITION, INC., et al.,

Plaintiffs,

v.

CIVIL ACTION NO. 2:15-cv-01488

SHEPARD BOONE COAL CO.,

Defendant.

MEMORANDUM OPINION AND ORDER

Before the Court is Plaintiffs' Motion for Leave to Amend Complaint (the "Motion to Amend"). (ECF No. 12.) On February 4, 2015, Plaintiffs filed the Complaint for Declaratory and Injunctive Relief and for Civil Penalties (the "Complaint"), in which Plaintiffs allege that Defendant violated provisions of the Clean Water Act. (ECF No. 1.) Defendant filed its answer to the Complaint on April 6, 2015. (ECF No. 5.)

On August 10, 2015, Plaintiffs filed the Motion to Amend, in which Plaintiffs request to "withdraw completely Plaintiffs' claims for civil penalties and narrow the requested relief to only injunctive relief." (ECF No. 12 at 2.) Plaintiffs attached their proposed amended complaint to the Motion to Amend. (*See id.*, Ex. 1.) To date, Defendant has not filed a responsive briefing to the Motion to Amend.

Federal Rule of Civil Procedure 15 permits amendment of a complaint more than twenty-one days after service "only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). "The court should freely give leave when justice so requires." *Id.* Under Rule

15(a), “leave to amend should be denied only when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or amendment would be futile.” *Matrix Capital Mgmt. Fund, LP v. BearingPoint, Inc.*, 576 F.3d 172, 193 (4th Cir. 2009) (citing *Laber v. Harvey*, 438 F.3d 404, 426 (4th Cir. 2006)). This liberal amendment approach “gives effect to the federal policy in favor of resolving cases on their merits instead of disposing of them on technicalities.” *Id.* (citation omitted).

Plaintiffs’ proposed amendment of the Complaint would not be prejudicial to Defendant, there is no indication in the record that Plaintiffs have acted in bad faith, and the Court is not aware of any evidence indicating the amendment would be futile. The Court therefore **GRANTS** the Motion to Amend. (ECF 12.) Accordingly, the Court **ORDERS** that Plaintiffs’ proposed amended complaint, (ECF 12, Ex. 1), is substituted as the operative complaint in this case.

IT IS SO ORDERED.

The Court **DIRECTS** the Clerk to send a copy of this Memorandum Opinion and Order to counsel of record and any unrepresented party.

ENTER: December 22, 2015



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE